IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 107 of 1992

For Approval and Signature:

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
DOSHI CHHABILDAS SHIVLAL & 6 - Respondents

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Appearance :
MR UR BHATT, ADDL. PUBLIC PROSECUTOR for Appellant
MR KIRTIDEV R DAVE with MR RAHUL K DAVE for Respondent:1
MR DK MODI with MR MD MODI for Respondents: 2 - 4.
MR PJ YAGNIK for Respondents: 5 - 7.

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 30/07/2007

ORAL JUDGMENT

1. This Appeal under Section 378 of the Code of Criminal Procedure, 1973, has been preferred by the appellant State of Gujarat against the judgment and order dated September 19, 1991, rendered by the learned Judicial Magistrate, First Class, Limdi, in Criminal Case No.755 of 1986, whereby the respondents (original accused Nos.1 to 7) have been acquitted of the charges for having committed offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (“the Act” for short).

2. Briefly stated, the case of the prosecution is that on September 3, 1985, at about 2:00 p.m., Mr. M.G.Nair, Food Inspector, who is the original complainant, visited the Kirana Shop (Provision Store) of the respondent No.1, which is located in the market at Chuda, from where the said respondent was carrying on the business of selling food grains, pulses, Ghee, jaggery, and other food articles. The respondent No.1 was present in

his shop at the time of the visit of the complainant. After introducing himself, the complainant declared his intention of purchasing a sample of groundnut oil labelled as “City Brand Pure Groundnut Oil” for the purpose of analysis. To this end, the complainant gave a written notice to the respondent No.1 in the presence of a Panch witness Mr. Niranjan Trambaklal Gosaliya, to draw a sample of groundnut oil from the sealed tin lying in the shop of respondent No.1. The sealed tin of groundnut oil was opened in the presence of respondent No.1 and the Panch witness by the complainant and 400 grams of groundnut oil was purchased for a sum of Rs.6.40 ps. under a bill, signed by the complainant, Panch witness and the respondent No.1. The sample of groundnut oil was then divided into three equal parts and put into three transparent, clean and dry glass bottles which were duly sealed, labelled and wrapped separately in brown paper as required by law. On the sample

bottles, a slip bearing the signatures of the Food Inspector, the respondent No.1 and the Panch witness was affixed. One of the samples was sent for analysis to the Public Analyst together with memorandum in Form VII under intimation to the Local Health Authority whereas the remaining two sample bottles were sent to the Local Health Authority at Bhavnagar. The sample of groundnut oil sent to the Public Analyst was analyzed and the report dated September 20, 1985, which is to be found at Ex.35, indicated that the sample was not conforming to the standards and provisions laid down under the Prevention of Food Adulteration Rules, 1955 (“the Rules” for short). As the sample of groundnut oil purchased form the shop of respondent No.1 was found to be adulterated within the meaning of the Act, the Food Inspector had applied for written consent of the competent authority for lodging prosecution against the respondents No.1 to 7. The consent for prosecution of the above respondents was

given by consent letter dated May 30, 1986, by the Assistant Director and Local (Health) Authority, Drug Control Administration, Bhavnagar Circle, that is, the competent authority, which is produced at Ex.44. In view of the according of sanction for prosecution, the Food Inspector had filed the compliant against the respondents in the Court of learned Judicial Magistrate, First Class, Limdi, which was registered as Criminal Case No.755 of 1986.

3. After issuance of summonses to the accused, the learned trial Court framed the Charge against the respondents, which is at Ex.107, and the same was read over and explained to them. The accused pleaded “not guilty” and therefore, the case came to be tried.

4. On behalf of the prosecution, Mr.Madanmohan Govindan Nair, Food Inspector and the complainant herein, was examined as P.W.1 and his testimony is to be found at Ex.18. He has stated in his examination-in-chief that on

September 3, 1985, he visited the Kirana Shop of the respondent No.1 at about 1:45 p.m. He was accompanied by one Mr.N.O.Waghela, who was his helper. The respondent No.1 was present in his shop at that time. This witness narrated in detail that he drew the samples of groundnut oil from a sealed tin labelled as “City Brand Pure Groundnut Oil” which was lying in the shop of the respondent No.1, for sale. He has further stated in his examination-in-chief that the tin was opened in the presence of respondent No.1 and Panch witness and 400 grams of groundnut oil was taken from the tin into a dry and odourless steel jug from which it was transferred to three dry and transparent glass bottles. The bill for the purchase of the said quantity of groundnut oil taken as a sample was countersigned by the respondent No.1, complainant and Panch witness, which is Ex.21. This witness has further narrated in detail the steps taken by him for sending the sample of groundnut oil for analysis and has

maintained that the procedure as prescribed by the Act and the Rules has been scrupulously followed.

Mr.Niranjan Trambaklal, who is the Panch witness, has been examined as P.W.No.2, at Ex.153. He has not supported the version of the prosecution and has categorically stated that he has appended his signature on the Panchnama at the behest of an Officer appearing like a Police Officer, who told him to sign the Panchnama at Ex.23. He has also, in terms, admitted that the said Panchnama was already prepared and he has just appended his signature to the same. This witness has been declared hostile at the request of learned Additional Public Prosecutor.

5. Before the trial Court, the case of the prosecution was that due procedure prescribed under the Act and the Rules was scrupulously followed by the complainant and the entire process of drawing of sample of groundnut oil and sealing it was undertaken in the

presence of the respondent No.1 and the Panch witness. It was further submitted that the competent authority had applied its mind before according sanction for prosecution which was legal and valid and therefore, the prosecution had made out a case for the conviction of the accused-respondents.

6. On the other hand, the respondents had challenged the grant of prosecution as not being a valid one as it showed non-application of mind, and had also contended that the prosecution had failed to discharge the onus to prove that there was compliance of the mandatory provisions of Rule 14 of the Rules, meriting the acquittal of the respondents.

7. On appreciation of evidence, the learned Magistrate acquitted the respondents of the charges against them, mainly on two counts. The first ground for acquittal was based on the conclusion that the consent for prosecution is not legal and valid inasmuch

as it was accorded without application of mind. The second aspect which weighed with the learned trial Court was, in effect, that there was non-compliance of the mandatory requirements of Rule 14 of the Rules. According to the learned Magistrate, there was no evidence on record that the steel jug in which the sample of groundnut oil was taken by the Food Inspector was cleaned before the sample was drawn, since the complainant has stated that prior to taking the sample from the shop of the respondent No.1, he had drawn another sample of oil in the steel jug from another shop. The learned Magistrate, therefore, concluded that the respondents deserve to be given the benefit of doubt on this ground as well. Lastly, it was held by the learned Magistrate that it is not proved beyond reasonable doubt that the respondents Nos.5 to 7 were the manufacturers of the sample goods and that the respondents Nos.2 to 4 had purchased the said goods from the respondents No.5 to 7. In view of the

abovereferred to conclusions, the learned Magistrate, by giving benefit of doubt to all the accused, acquitted the respondents vide judgment dated September 19, 1991, giving rise to the instant Appeal.

8. This Court has heard Mr.U.R.Bhatt, learned Additional Public Prosecutor for the State, Mr. Kirtidev R.Dave with Mr.Rahul K.Dave, learned counsel for the respondent No.1, Mr.D.K.Modi with Mr.M.D.Modi, learned counsel for the respondents No.2 to 4 and Mr.P.J.Yagnik, learned counsel for the respondents No.5 to 7, at length and in great detail and has gone through the paper-book containing relevant documents as well as the original record.

9. Mr.U.R.Bhatt, learned Additional Public Prosecutor, has contended that, if the contents of the consent letter containing the sanction for prosecution (Ex.44) are perused, it is clear that the competent authority has gone through all the papers pertaining to the

case and only after due application of mind, has accorded the sanction for prosecution. He has submitted that it is the substance of the consent letter that is important and not its form. The consent letter shows that there is application of mind by the competent authority which has perused the relevant material and has recorded its satisfaction before according sanction for prosecution. At that stage, the sanctioning authority was not required to weigh the pros and cons and go into the technicalities of the case. The learned Additional Public Prosecutor has emphasized that the competent authority has mentioned Sections 7 and 16 of the Act while according the sanction and in view of the same, it was not necessary for him to mention the sub-sections or clauses of Sections 2 and 7 of the Act. The learned Additional Public Prosecutor has pointed out that the function being performed by the competent authority is administrative and not quasi judicial and at the stage of granting sanction it is only to

be seen, whether a prima facie case exists on the basis of the documents, which has been done by the competent authority in the present case. He has therefore submitted that the learned Magistrate has come to a wrong conclusion that the sanction is not a valid one. In support of his contentions, the learned Additional Public Prosecutor has relied upon the decision reported in **1991(2) GLH 615 – Harshvadan Dahyalal Sevak, Food Inspector v. Nareshbhai Devandas Vaghvani & anr.**

The second submission advanced by the learned Additional Public Prosecutor is that the sample of groundnut oil was drawn after meticulously following the procedure as prescribed by the Rules and the steel jug in which the samples of groundnut oil were taken was clean and this has been so stated by the Food Inspector in his testimony. He emphasised that the learned trial Court ought to have relied upon the statement of the Food

Inspector in this regard as, according to the learned Additional Public Prosecutor, there is evidence on record that the steel jug as well as the bottles in which the samples were taken were clean and dry and in this view of the matter, the finding of acquittal recorded by the learned trial Court on the ground of non-compliance of the mandatory provisions of Rule 14 deserves to be set aside.

10. On the other hand, the first submission of Mr.Kirtidev R.Dave, learned counsel for the respondent No.1, is that there is no evidence that the bottles in which the sample of groundnut oil was stored were cleaned before taking the said sample. It is submitted that the complainant has admitted that the sample of groundnut oil was taken in a steel jug before transferring it into the glass bottles, and this jug was used by the Food Inspector for taking another oil sample from another shop, just prior to taking the sample of groundnut oil in the present case.

Mr.Kirtidev R.Dave has further submitted that there is no evidence that either the steel jug, or the bottles, had been cleaned before the sample of groundnut oil was taken from the shop of respondent No.1 and the helper of the Food Inspector who was supposed to be responsible for cleaning the bottles, has not been examined. It is pointed out that in view of this position, the complainant has not complied with the mandatory requirements of Rule 14 and the prosecution has failed to discharge the onus which rests upon it to prove that the requirements of law were duly complied with.

The second submission advanced by the learned counsel for the respondent No.1 is that the Panch witness, P.W.2, has not supported the case of the prosecution, which is evident from his testimony at Ex.153, and even the report of the Public Analyst at Exh.35 does not disclose the percentage of adulteration in the sample of groundnut oil.

Thirdly, it is contended by Mr.Kirtidev R.Dave, that the sanction for prosecution has been given without application of mind. According to him, the consent letter is devoid of reasons and does not disclose which clause of Section 2 and which sub-section of Section 7 is applicable in the present case and therefore, it cannot be regarded as a legal and valid sanction.

The fourth submission advanced by learned counsel for the respondent No.1 is that the respondent No.1 is a vendor and has duly produced the bill of purchase of groundnut oil from respondents No.2 to 4 at the time of taking of the sample at Ex.64, the xerox copy of which was taken by the complainant. Moreover, the tin of groundnut oil was a sealed one and it was opened in his presence by the complainant himself. Referring to the documents at Ex.98/1 to 98/4 of the original record, the learned counsel for the respondent No.1 has submitted that the bill

for five tins of groundnut oil purchased from the respondents No.2 to 4, the bill of the contractor for collection of octroi, the octroi receipt and the letter of the transporter to the learned Magistrate to the effect that five tins of oil were received, are conclusive evidence to prove that the respondent No.1 had purchased the groundnut oil from the dealer with written warranty in the prescribed form and the groundnut oil, while in his possession, was properly stored and that he has sold it in the same state as he purchased it. Therefore, it is emphasised, that the respondent No.1 is not liable to be prosecuted for the offence and the defence under Section 19(2) of the Act is available to him. In view of the above contentions, the learned counsel for the respondent No.1 has submitted that the trial Court has rightly acquitted the respondents of the charges against them.

11. Mr.D.K.Modi, learned counsel appearing for

the respondents No.2 to 4, has raised several grounds in defence of the said respondents and in support of the judgment of the learned Magistrate. His first contention is that the respondents No.2 to 4 have been prosecuted merely on the strength of the bill produced by the respondent No.1 – vendor, before the Food Inspector. He has invited the attention of the Court to the record and submitted that Ex.64 is the original bill whereas Ex.135 (Mark-A) is the xerox copy of the same and Ex.136 is the duplicate bill in the bill-book maintained by the respondent No.2-firm and if Ex.64 and Ex.136 are compared, it is seen that there is an erasure in Ex.64, where certain words have been scored out. Moreover, the words “City Brand” visible in Ex.64 do not appear in Ex.136, i.e. the duplicate bill in the bill-book maintained by the respondent No.2. He submits that this fact has been noticed by the learned Magistrate and recorded in the impugned judgment. According to Mr.D.K.Modi, the bill produced by the

respondent No.1 at Ex.64 is not a genuine bill and the defence under Section 19(2) of the Act will not be available to him. It is further contended that the identity of the sample of groundnut oil has not been established and therefore, no reliance can be placed on the bill. What was sold by the respondent No.2-firm were only five tins of groundnut oil and there was no brand like “Teen Ekka” or “City Brand” on the same as stated by the complainant. According to the learned counsel for the respondents No.2 to 4, mere production of the bill is not sufficient and will not dispense with the proof of its contents. Since the respondent No.1 has not entered into the Witness Box, the benefit of the provisions of Section 19(2) of the Act cannot be claimed by him. In this regard, Mr.D.K.Modi has placed reliance on two decisions reported in **AIR 1971 SC 1865 – Sait Tarajee Khimchand** and **others v. Yelamarti Satyam and others** and **1990 Cr.L.J. 2452 – S.D.Nagdeve v. Sudhakar**

Raghunath Burange.

The second contention raised by Mr.D.K.Modi is that a duty is cast upon the prosecution to comply with the mandatory requirements of Rule 14 which stipulates that the samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or any other suitable containers. Referring to the testimony of the complainant, it is pointed out by Mr.D.K.Modi that in the present case, the evidence of the complainant himself amply proves that the sample of groundnut oil was taken by him in a steel jug, before transferring it into the glass bottles. In his cross-examination by the respondent No.1, the complainant admits that the steel jug was brought from his office. Further, in the cross-examination on behalf of the respondent No.5, the complainant has further admitted that before taking the sample of groundnut oil from the shop of the respondent No.1, he had visited another shop in the market at

Chuda and taken a sample of oil from there. He has admitted that he did not remember what was the brand of oil taken as a sample previously. The learned counsel has pointed out that the complainant has stated in cross-examination that the shop from where he had previously taken the sample of oil was close to the shop of the respondent No.1 and that it was possible to reach the shop of the respondent No.1 in five to seven minutes and also that he had taken the sample of oil from the shop of respondent No.1, immediately after he had taken the oil sample from the previous shop. In view of this position, it is forcefully contended by Mr.D.K.Modi that there is no evidence worth the name to suggest that the steel jug used by the complainant before taking the sample from the shop of the respondent No.1 was cleaned, and by whom, and it is possible that some traces of the oil sample taken by the complainant from the previous shop could have remained in the said steel jug and, therefore, the

respondents have rightly been given the benefit of doubt by the learned Magistrate. Mr.D.K.Modi has referred to several decisions in support of his submissions, some of which are; (1) **1998(2) GLH 960 – State of Gujarat v. Bhagchand Sadhumal**, (2) **1999(1) GLH 227 – State of Gujarat v. Bhupendra M.Mehta**, (3) **1995(2) GLH 722 – State of Gujarat v. Babu Lavji Jalia**, (4) **1995(2) GLR 1099 – State of Gujarat v. Sohanlal Trikamchand Shah & Ors.**, (5) **2002(2) FAC 196 – Sudhirchandra B.Joshi, Food Inspector, Baroda v. Arvindkumar Naranbhai Patel & others** and (6) **2005(1) FAC 66 – State of Gujarat v. Dipakkumar Lakhiram Gondaliya**.

The third contention advanced by Mr.D.K.Modi is that while lifting the sample of groundnut oil, there is no evidence on record that it was stirred, mixed and made homogeneous, which is the requirement of law and therefore, the sample was not properly taken and failure to obtain a proper sample would

make the subsequent analysis worthless. In support of this submission, the learned counsel has placed reliance on (1) **2005 CR.L.J. 2100 – State of Maharashtra v. Vinayak Mahadeorao Waze and another**, (2) **2005(1) FAC 16 (Andhra Pradesh) – The Food Inspector v. Padakanti Bhupati** and (3) **1991(2) FAC 98 – Suresh Kumar v. State of Haryana**.

The learned counsel for the respondents No.2 to 4 has pointed out that as regards detection of castor oil in the sample of groundnut oil, no specific measurement is shown and the Public Analyst has not come to the conclusion that it is injurious to health.

The last contention advanced by Mr.D.K.Modi is regarding the validity of the sanction. He has submitted that the consent for prosecution is a mechanical and omnibus one, which shows total non-application of mind. According to Mr.D.K.Modi, merely by writing

the word `adulterated' in the consent, it is not clear under which clause of Section 2 or which sub-section of Section 7 of the Act, the offence falls. He has submitted that Section 2(ia) of the Act defines the word `adulterated' and different species of the offence are enumerated from sections 2(ia)(a) to (m) of the Act. Failure to specify under which clause of Section 2(ia) the adulteration falls is an infirmity which proves that the sanction is not a valid one. It is further submitted that no reasons have been given by the competent authority while granting sanction for prosecution. In support of this contention, the learned counsel has relied upon **1985(II) FAC 88 – Nizamuddin Siddikbhai Tigala v. State of Maharashtra** and **1979(I) FAC 210 – State of Maharashtra v. Shantilal Jamnadas Thakkar**. It is noticed that these judgments have also been relied upon by the learned Magistrate in coming to the conclusion that the competent authority has not applied its mind and that the

sanction for prosecution is not valid.

12. Mr.P.J.Yagnik, learned counsel for the respondents No.5 to 7, the manufacturers of the groundnut oil in question, has adopted the arguments advanced by Mr. D.K.Modi. The only other aspect that he has pointed out is, that the respondents No.5 to 7 have been implicated on the basis of the label of “City Brand Pure Groundnut Oil” which was found on the tin of groundnut oil from which the sample was drawn by the complainant. However, it is submitted by learned counsel for the respondents No.5 to 7 that there is no evidence whatsoever regarding the sale of the tin of groundnut oil to the respondents No.1 to 4, putting of the label on the tin, or issuance of any bill in this regard. Mr.P.J. Yagnik has contended that it was the duty of the Food Inspector to make such inquiries and inspection as may be necessary to detect the manufacture, storage or sale of article of food in

contravention of the Rules as provided by Rule 9(f), which has not been done by him. According to the statements made by the Food Inspector in his cross-examination, he has admitted that it is only on the basis of the label found on the tin of groundnut oil that he has implicated the respondents No.5 to 7 and no inquiry has been made in this behalf. In support of this point, Mr.P.J.Yagnik has relied upon the decision reported in **2004(1) FAC 65 – Mohinder Kumar v. State of Haryana**.

13. Collectively, the learned counsel for the respondents have submitted that the learned Magistrate has rightly appreciated the evidence on record and recorded a finding of acquittal and this Court, while hearing an appeal against acquittal, would appreciate that if two views are possible, then the one favourable to the accused is to be adopted. It is therefore prayed that the finding of acquittal recorded by the learned Magistrate be upheld.

14. It is the settled position of law that the appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is based. The appellate Court may reach its own conclusions, both on questions of fact and law, on such re-appreciation of evidence before it. The Supreme Court, in State of **Madhya Pradesh v. Bacchudas alias Balaram & Ors. - 2007 CR.L.J. 1661**, has succinctly reiterated the principles regarding interference in an appeal against acquittal in the following terms:

"9. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is

favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v. State of M.P., 2003(3) SCC 21). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiable eliminated in the process, it is a compelling reason for interference..."

In the light of the above principles, it is now to be seen whether the learned Magistrate has rightly recorded a finding of acquittal in favour of the respondents on the grounds of invalid sanction and non-compliance of the mandatory provisions of Rule 14 of the Rules.

15. The first ground on which the learned Magistrate has acquitted the respondents is that the consent accorded by the competent authority for the prosecution of respondents No.1 to 7 is not valid in law inasmuch as it does not mention the specie of `adulteration' enumerated in clause 2(ia)(a) to (m) of the Act and also does not contain reasons for grant of sanction, which, in the opinion of the learned Magistrate, shows non-application of mind. To examine this ground, it will be necessary to reproduce the contents of the consent letter which is produced at Ex.44, and relevant provisions of the Act and the Rules.

“ CONSENT

I Ramanlal Vadilal Shah Assistant Director and Local Health Authority have gone through carefully the subject case. The Public Analyst has declared the Sample of Food Article “Ground-nut Oil City Brand” to be adulterated as per provisions contained in the prevention of food adulteration Act. I am satisfied that (1) Shri Chhabildas Shivlal

Doshi (2) M/s.Kantilal & Bros., Surendranagar (3) Shri Jankali Kasamali (4) Shri Karim Hasamali (5) M/s.Prakash Industries Keshod (6) Shri Narottamdas Rugnath and (7) Shri Sharadchandra Himatlal have contravened the provisions of section 7 punishable under section 16 of the Act.

Under the power vested in me, I, therefore, accord sanction for prosecution. Shri C.M.Nair Food Inspector is authorised to file a complaint against aforesaid persons and firms for aforesaid offence.

Sd/-
Assistant Director & Local
(Health) Authority D.C.A.
Bhavnagar Circle"

Section 20(1) of the Act provides for the grant of Sanction for prosecution and reads as under:

"20. Cognizance and trial of offences – (1) No prosecution for an offence under this Act, not being an offence under section 14 or section 14A shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in section 12, if he or it produces in court a copy of the report of the public analyst alongwith the complaint."

A bare reading of this section indicates that before allowing a prosecution for an offence under the Act, not being an act under Section 14 or Section 14A of the Act, the condition precedent is that written consent of the Central Government or the State Government or the person authorised in this behalf by general or special order by the appropriate Government is mandatory. In the present case, it is not disputed that the Assistant Director and Local Health Authority, which has accorded the sanction for prosecution, has been designated as the competent authority in this regard. A perusal of the consent reproduced hereinabove makes it clear that the competent authority has carefully gone through the papers and other relevant documents of the case including the report of

the Public Analyst recording that sample of groundnut oil is found to be adulterated and after being satisfied that the respondents No.1 to 7 have contravened the provisions of Section 7, punishable under Section 16 of the Act, has accorded sanction for their prosecution. The competent authority has clearly applied its mind to the facts constituting the offence after perusing the relevant documents and on being satisfied that the provisions of law have been contravened, has accorded sanction for prosecution of the respondents. Not mentioning the clauses of Section 2 or sub-sections of Section 7 of the Act would not render the grant of sanction invalid in law. The competent authority, while granting sanction for prosecution, is performing administrative duties and not quasi-judicial ones and at that stage it is not required that detailed reasons be given in support of the grant of sanction. It will suffice if the consent letter according sanction for

prosecution shows that the competent authority has applied its mind to the relevant documents before it and only after being satisfied that a prima-facie case exists, sanction for prosecution is accorded. In **Suresh H.Rajput and others v. Bhartiben Pravinbhai Soni and others – (1996)7 SCC 199**, the Supreme Court has held as under:

11. In State of Bihar v. P. P. Sharma, (1992) Supp (1) SCC 222 : 1992 SCC (Cri) 192, one of us, (K. Ramaswamy, J.) considered the effect of the sanction under Section 197 of the Criminal Procedure Code at p.268 thus: (SCC p.67)

> *"It is equally well settled that before granting sanction the authority or the appropriate Government must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and that the appropriate Government would apply their mind to those facts. The order of sanction is only an administrative act and not a quasi-judicial one nor is a lis involved. Therefore, the order of sanction need not contain detailed reasons in support thereof as was contended by Shri Jain. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reason in that regard".*

12. It is seen that the analysis report which was placed before the Local (Health) Authority and the other pertinent material in connection therewith have been placed before the sanctioning authority. After going through the material, sanction was granted for laying the prosecution. At that stage, it was not for the sanctioning authority to weigh pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal etc. All these are not matters for the sanctioning authority to weigh and to consider the pros and cons of the case before granting sanction to lay prosecution against the respondents.

13. Considered from this perspective, we hold that the learned Magistrate was not right in law in holding that the sanction granted under Section 20(1) is not valid in law."

In the light of the principles laid down in **Suresh H.Rajput and others v. Bhartiben Pravinbhai Soni and others** (supra), this Court is of the considered view that the sanction for prosecution accorded by the Assistant Director and Local Health Authority, DCA, vide consent dated 30.5.1986

(Ex.44) does not suffer from any infirmity and is a valid one. The submissions made by Mr.U.R.Bhatt, learned Additional Public Prosecutor, in this regard are worthy of acceptance, while those advanced by the learned counsel for the respondents are not convincing and are, therefore, rejected. The learned Magistrate is, therefore, not correct in law in holding that the sanction for prosecution in the present case is not a valid one. Consequently, this finding recorded by the learned trial Court is set aside.

16. The second ground for acquitting the respondents recorded by the learned Magistrate, is that there is no evidence on record that the steel jug in which the sample of groundnut oil was drawn before being poured into the glass bottles was cleaned and if so, by whom, therefore, the respondents deserve to be given benefit of doubt. In this regard, it would be relevant to notice the

provisions of Rule 14 of the Rules which reads as under:

"14. Manner of sending sample for analysis – Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of moisture and shall be carefully sealed."

It is evident from a bare reading of the rule quoted above that the samples of food taken for the purpose of analysis **shall** be taken in "*clean dry bottles or jars or in other suitable containers*". The language in which this Rule is couched makes it clear that its provisions are mandatory in nature and a duty is cast upon the prosecution not only to comply with its provisions by using clean and dry bottles for storing the sample but also to lead evidence in the trial Court that the bottles or jars or containers so used were clean and dry. If there is non-compliance of the Rule, it would constitute a clear

violation, giving rise to benefit of doubt in favour of the accused. In the present case, the evidence of the Food Inspector clearly indicates that just before taking the sample of groundnut oil in question from a sealed tin lying in the shop of the respondent No.1, into a steel jug, he had used the steel jug to take another sample of oil from another shop. He has stated that he does not remember which brand of oil he took as a sample in the previous case. He has also stated in his testimony that the steel jug was brought from his office and that his Helper used to clean the jug and bottles used for taking samples. There is not an iota of evidence to prove that the steel jug was cleaned before taking the sample of groundnut oil from the shop of the respondent No.1. The general statement that the Helper used to clean the jug and the bottles is not at all helpful, since it has not been stated that the said jug and bottles were actually cleaned before the sample was taken. Neither the Peon nor the Helper of the

complainant – Food Inspector have been examined in this regard. This aspect assumes significance in the light of the fact that the steel jug was used for taking another sample of oil from another shop, just prior to taking the sample of oil from the shop of the respondent No.1. What type of oil was taken from the previous shop has not been disclosed by the complainant. Moreover, there is no evidence to prove that after taking the first sample and before taking the sample of groundnut oil from the shop of the respondent No.1, the jug was cleaned. It cannot be ruled out that the presence of Castor oil in the sample of groundnut oil as found in the report of the Public Analyst, may be attributable to the previous sample of oil taken by the Food Inspector. Even the Panchnama does not state that the steel jug was cleaned before taking the sample and the Panch witness also does not support the case of the prosecution. He has stated that his signature was obtained on a document which

had already been prepared. Seen in this light, there is sufficient room for doubt that the mandatory requirements of Rule 14 have not been complied with.

The language of Rule 14 mandates that the sample of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be properly closed and sealed. Not only should the bottles be clean and dry but this requirement also extends to the jars or containers in which the sample is taken. The purpose of the enactment of the Rule is to ensure that the bottles, jars and containers used for taking a food sample for analysis should be clean and dry, so as to prevent any contamination of the food sample. It therefore stands to reason that the containers or vessels used in the process of taking the food sample (in this case a steel jug) should be clean and dry. Moreover, there should be clear and convincing evidence on

record to this effect, otherwise, the provisions of Rule 14 would be rendered nugatory. In the present case, the prosecution has not established that the steel jug was cleaned after taking the previous sample and before taking the sample of groundnut oil from the shop of the respondent No.1 by leading cogent evidence to this effect. On the basis of the evidence on record, the possibility cannot be ruled out that the steel jug in which the sample was taken before being transferred into the glass bottles was contaminated with some other substance, and the respondents, therefore, deserve to be given the benefit of doubt in this regard. The learned Magistrate has, therefore, rightly recorded a finding of acquittal in favour of the respondents on this ground.

17. Although the learned counsel for the respondents have advanced various other contentions, this Court is not inclined to go

into any of them in view of the fact that the acquittal recorded by the learned Magistrate is not interfered with.

18. In the light of aforesaid discussion, the finding of the learned Magistrate that the sanction for prosecution is not valid in law is set aside. However, the finding of acquittal recorded on the basis of non-compliance of mandatory requirement of Rule 14 of the Rules is upheld.

19. For the foregoing reasons, the appeal fails and is, therefore, dismissed.

(Smt.Abhilasha Kumari, J.)

(sunil)